

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
<u>Computer III</u> Further Remand Proceedings:)	CC Docket No. 95-20
Bell Operating Company)	
Provision of Enhanced Services)	
1998 Biennial Regulatory Review --)	CC Docket No. 98-10
Review of <u>Computer III</u> and ONA)	
Safeguards and Requirements)	
To: The Commission		

REPLY COMMENTS OF ADT SECURITY SERVICES, INC.

ADT Security Services, Inc. ("ADT"), by its attorneys, hereby responds to the initial comments filed in response to the Further Notice of Proposed Rulemaking ("FNPRM")^{1/}, as captioned above, on March 27, 1998.

I. GENERAL SUPPORT FOR CEI PLAN REQUIREMENTS.

Many parties in this proceeding, including the General Services Administration ("GSA"), wisely observe that the Commission's tentative conclusion to substantially reduce or eliminate the requirement for BOC filing of Comparably Efficient Interconnection ("CEI") plans is premature.^{2/} Neither ONA requirements or the yet-unrealized competitive goals of the

^{1/} FCC 98-8 (January 30, 1998).

^{2/} See, e.g., Comments of GSA at 7 ("GSA Comments"); Comments of the Information Technology Association of America at 16-17; Comments of America Online, Inc. at 20; Comments of Association of Teleservices International, Inc. at 28-31; Comments of the Ad Hoc Telecommunications Users Committee at 2-3.

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Telecommunications Act of 1996 (the "1996 Act") ameliorate the unassailable fact that the BOCs retain monopoly control over access to the local exchange networks, and thus retain the ability and the incentive to discriminate unfairly against unaffiliated information services providers.^{3/} As a provider of alarm monitoring services that is reliant upon the BOCs for access to their local networks, ADT knows from first-hand experience that other non-structural safeguards, standing alone, are inadequate to prevent anticompetitive BOC behavior, and therefore urges the Commission to retain CEI plan requirements -- a vital source of information regarding BOC activities in the information services marketplaces. As GSA observes, given the realities of local market domination by the BOCs, "the need for CEIs is not eliminated by these [non-CEI] obligations. Indeed, the CEIs are a necessary tool for the Commission to employ in ensuring that the BOCs fulfill them."^{4/}

Moreover, ADT concurs with GSA that the nine parameters addressed by BOCs in their CEI plans provide vital information to end users of BOC services (including those in the alarm monitoring services industry). Elements of particular concern to ADT in CEI plans are BOC plans for the unbundling of basic services and the manner in which end user access is provided. Hopefully the time will come when local markets are truly competitive and CEI requirements will not be necessary; however, as GSA accurately observes, that time has not yet arrived.

^{3/} See FNPRM at ¶ 43 ("Because the BOCs control the local exchange network and the provision of basic services, in the absence of regulatory safeguards they may have the incentive and ability to engage in anticompetitive behavior against [information service providers] that must obtain basic network services from the BOCs in order to provider their information service offerings.")

^{4/} GSA Comments at 8.

II. BOC OPPOSITION TO CEI PLAN REQUIREMENTS HAS NO BASIS IN FACT OR RATIONAL PUBLIC POLICY.

Ameritech and SBC spend considerable time in their Comments describing the unnecessary administrative burdens and anti-competitive results imposed upon them by CEI plan requirements.^{5/} It is more than slightly disingenuous for these parties to argue in this proceeding that the 1996 Act obviates the need for CEI plans^{6/} (and even ONA requirements in general^{7/}), while arguing simultaneously before the federal courts that the 1996 Act is an unconstitutional bill of attainder that must be invalidated.^{8/} Taken together, BOC comments here and BOC litigation in the 5th Circuit reveal their true objective: no restraints on their monopoly power anywhere, at any time, in any market. Put simply, the purported grievous injury to the BOCs' competitive positions imposed by CEI plan requirements are fictional.

Much is made by Ameritech and SBC of the substantial delay that the CEI requirement imposes on their plans to unveil new services.^{9/} The implicit conclusion from this line of reasoning is that, no matter how valuable the CEI requirement, it must be eliminated because the current process takes too much time. Missing from this analysis is any suggestion of how the process may be expedited, where appropriate, while the necessary safeguards

^{5/} See, e.g., Ameritech Comments at 7-12; SBC Comments at 27-34.

^{6/} SBC Comments at 32-34.

^{7/} Ameritech Comments at 5-7.

^{8/} See SBC Communications, Inc. v. Federal Communications Commission, No. 7:97-CV-163-X, 1997 WL 800662 (N.D. Tex. Dec. 31, 1997), stayed, (N.D. Tex. Feb. 11, 1998), appeal pending. Although Ameritech was not a party to this litigation, it filed a motion to intervene on January 5, 1998 that was denied by the court on January 7, 1998.

^{9/} Ameritech Comments at 8 (10-month delay); SBC Comments at 28 (3 to 13 month delays).

provided by CEI rules maintained. In accordance with the Commission's request for proposed "streamlined procedures" as alternatives to the current CEI filing requirements,^{10/} ADT submits that BOC concerns over long delay easily could be addressed under an expedited public notice format. For example, a CEI plan to which no objection was raised within a reasonable period of time (e.g., 60 days) after public notice would be deemed approved by the Commission.^{11/} This alternative structure would minimize delay for truly equitable, noncontroversial BOC initiatives, while preserving the right for interested parties to extend the period and intensity of Commission review where a BOC plan raises serious competitive objections.

III. ONA AND THE 1996 ACT ARE NOT SUBSTITUTES FOR CEI.

Elimination of the CEI requirement prior to a determination by the Commission that the goals of the 1996 Act or the ONA regime have been substantially met would threaten competition and would be contrary to the public interest. As noted by the GSA, CEI requirements are essential tools for ensuring that the more generalized rules and goals established by the 1996 Act -- which have yet to be achieved -- are present and implemented.^{12/} Given Commission determinations that no BOC has satisfied the conditions of Section 251, and thus that no BOC is currently qualified to provide out-of-region interLATA service, this factual assertion is beyond dispute. It follows logically that it would be unwise public policy to repeal one of the principal mechanisms for insuring implementation of the

^{10/} FNPRM at ¶64.

^{11/} This mechanism is not altogether different from the streamlined international Section 214 application process set out in Section 63.12 of the Commission's Rules.

^{12/} Infra at 2.

requirements of the 1996 Act -- the CEI plan requirement -- until the Commission determines that any BOC seeking relief from CEI rules has indeed satisfied the requirements of the 1996 Act.

The identical argument applies with respect to ONA rules. Even if this proceeding results in continued application of the ONA requirements, the goals of these requirements will not be met overnight. Given that fact, and given the history of predatory BOC behavior, wise public policy dictates retention of CEI requirements at least until the goals of the ONA rules have been attained.

IV. CONCLUSION.

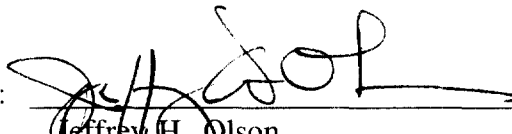
As even a casual observer of the current landscape would conclude, the telecommunications industry is in a time of considerable regulatory flux. Indeed, if certain judicial pronouncements on the subject are upheld on review,^{13/} the industry may find itself in uncharted waters without the essential safeguards and navigational tools specified by Congress in the 1996 Act. Thus, as ADT discussed in its initial comments, it would be dangerously premature to eliminate any portion of the Computer III regulatory regime governing BOC provision of information services. Indeed, some safeguards previously viewed by the Commission as unnecessary may prove critical to filling a potential regulatory vacuum created by the judiciary. Until the Commission is confident that a regulatory scheme that fully

^{13/} See, e.g., SBC Communications, Inc. v. Federal Communications Commission, No. 7:97-CV-163-X, 1997 WL 800662 (N.D. Tex. Dec. 31, 1997), stayed, (N.D. Tex. Feb. 11, 1998), appeal pending; Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), vacated in part on reh'g, Iowa Utilities Bd. v. FCC, 120 F.3d 753, further vacated in part sub nom. California Public Utilities Comm'n v. FCC, 124 F.3d 934, writ of mandamus issued sub. nom. Iowa Utilities Bd. v. FCC, No. 96-3321 (8th Cir. Jan. 22, 1998), petition for cert. granted, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998).

protects and advances the public interest can and will be put into place, the wholesale abandonment of the CEI rules would be highly precipitous.

Respectfully submitted,

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